STATEMENT ON BEHALF OF

THE COUNCIL OF INSURANCE AGENTS AND BROKERS (CIAB)[1],
THE INDEPENDENT INSURANCE AGENTS & BROKERS OF AMERICA (IIABA)[2],
AND THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS (NAIFA)[3]

BEFORE THE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON TAX REFORM AND SMALL BUSINESSES: GROWING OUR ECONOMY AND CREATING JOBS

SUBMITTED MAY 31, 2018

INTRODUCTION

On behalf of CIAB, IIABA, and NAIFA ("Insurance Producer Associations" or "Associations") we submit the following statement for the record regarding the above referenced hearing that occurred on May 23. Together all three Associations represent tens of thousands of pass-through businesses that are licensed by state insurance regulators to sell and service insurance products. These insurance businesses employ people in every congressional district in the country.

As the committee knows, Section 199A of the Internal Revenue Code (IRC) is a new section of the IRC that creates a 20% deduction on "qualified business income" (QBI) for owners and shareholders of pass-through businesses. The Associations are currently seeking clarity on the application of this deduction with the Department of Treasury and the Internal Revenue Service (IRS).

As outlined further below, the Insurance Producer Associations understand that it was the intent of Congress to exclude the business of insurance, including insurance producers, from the definition of "specified service trade or business" contained in Section 199A. The Associations are submitting this statement for the record because confusion over the proper application of this definition is already creating problems for our members as they file quarterly estimated tax payments. Consequently, we urge

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[1] CIAB represents the most successful employee benefits and property/casualty agencies and firms in the U.S. Our member firms annually place more than $300 billion in commercial insurance business in the United States and abroad, and they employ upward of 350,000 people worldwide. The products sold by Council members provide vital security and benefits to countless employees and businesses across the country.

[2] IIABA is the nation's oldest and largest trade association of independent insurance agents and brokers, representing a nationwide network of approximately a quarter of a million agents, brokers, and employees. IIABA represents independent insurance agents and brokers in all 50 states that offer customers a choice of policies from a variety of insurance companies across all lines of insurance—property, casualty, life, health, employee benefit plans and retirement products.

[3] Founded in 1890, NAIFA is the oldest, largest and most prestigious association representing the interests of insurance professionals from every Congressional district in the United States. NAIFA's mission – to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members – is the reason NAIFA has consistently and resoundingly stood up for agents and called upon members to grow their knowledge while following the highest ethical standards in the industry.

Congress if necessary to clarify that congressional intent at time of passage of the "Tax Cuts and Jobs Act" was that the business of insurance, including insurance producers, be excluded from the definition of "specified service trade or business," and therefore able to fully utilize the 20% deduction.

THE BUSINESS OF INSURANCE, INCLUDING INSURANCE PRODUCERS, IS PROPERLY EXCLUDED FROM THE DEFINITION OF "SPECIFIED SERVICE TRADE OR BUSINESS" IN SECTION 199A OF THE IRC AND ANY IMPLEMENTING GUIDANCE OR REGULATIONS SHOULD APPROPRIATELY RECOGNIZE THIS.

Section 199A can be summarized as follows:

- All pass-through business owners/shareholders can receive the full 20% deduction when their annual taxable income does not exceed $315,000 (joint) / $157,500 (single).
- For owners/shareholders at higher income levels the deduction cannot exceed 50% of applicable employee wages paid, or 25% of applicable wages plus 2.5% of capital assets (e.g. tangible property purchased for the business), whichever is greater
- Finally, the deduction is phased out for owners/shareholders of a "specified service trade or business" between $315,000 (joint)/$157,500 (single) and $415,000 (joint)/$207,500 (single). In other words, an owner/shareholder of a "specified services business" with annual taxable income above $415,000 (joint) an $207,500 (single) cannot utilize the deduction.

The new law adopts an amended definition of what is not considered a "qualified trade or business" for purposes of exclusions for gains from business stock contained in Section 1202(e)(3) of the tax code to create a definition for a "specified service trade or business" that would be excluded from using the 20% deduction in certain cases.

The new § 199A generally defines a non-qualified "specified service trade or business" as those described in IRC § 1202(e)(3)**(A):**

> *any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees.*

The new tax law, however, modifies the above definition in three respects. Namely, it:

- Excludes "engineering" and "architecture;"
- Refers to the reputation or skill of "employees or owners," instead of just "employees:" and
- Adds investing and investment management as specified service businesses.

Tellingly, when Congress altered the definition in 1202(e)(3)(A), **Congress did not add insurance businesses to the list of non-qualified service businesses**. Indeed, adding investing/investment management businesses was necessary because IRC § 1202(e)(3)(B) includes a list of businesses distinct from (e)(3)(A) (i.e., a list of businesses not captured in the non-qualified services definition based on subsection (A) alone). Those businesses in 1202(e)(3)(B) include:

> any banking, ***insurance***, financing, leasing, ***investing***, or similar business.

Ultimately, Congress could have included within the definition of "specified service trade or business" all of § 1202(e)(3), or (e)(3)(A) and (B)—but it did not. Instead, it selectively expanded the definition of service businesses in (A) to include investing businesses, and did not include insurance businesses, banking businesses, leasing businesses, etc. Thus, the Insurance Producer Associations understand that while

Congress intended that any insurance business should not be treated as a "specified service trade or business."

Moreover, our member firms are "insurance businesses" and are regulated as such.[4] Our members operate as the day-to-day sales force for the insurance industry. Insurance producers are licensed as insurance businesses by state insurance regulators. Every state requires individuals to obtain an insurance license to sell and service insurance products. Additionally, many states require them to be appointed as agents with authority to sell on behalf of insurers and deliver binding insurance contracts. They also have special examination, appointment, compensation and disclosure requirements (and restrictions) under state insurance laws and regulations by virtue of their role as insurance businesses.

Finally, it is well settled law at the federal level (in statute and judicial decisions) that the sale and servicing of insurance is considered part of the "business of insurance." Multiple federal statutes, including the Gramm Leach Bliley Act of 1999 and the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010, include the sale and servicing of insurance as part of the "business of insurance."

CONCLUSION

The Insurance Producer Trade Associations appreciate your leadership on tax reform and are committed to continuing to work with Congress on these important issues. However, our member firms are not the type of businesses that Congress intended to exclude from receiving the full benefits of Section 199A. Our members provide protection products that are essential to the economy, individual businesses and American families, employ millions of people across the U.S., and occupy numerous retail locations in every state. Excluding our member firms from receiving the full benefits of § 199A would be contrary to Congress' broad public policy goals of growing the economy and creating jobs, and—as with any policy development that increases the cost of doing business—would ultimately be detrimental to consumers of vital insurance products. With the "Tax Cuts and Jobs Act," Congress enacted, and the President signed the broadest changes to the American tax code since the 1980s. The intent of this endeavor was to provide businesses and hardworking individuals across the country with much-needed tax relief. Interpreting the pass-through provisions in the new tax law in a narrow and exclusionary manner would only undermine these objectives and stunt economic benefits associated with tax reform.

[4] The McCarran Ferguson Act, 15 U.S.C. §§ 1011-1015, leaves regulation of the "business of insurance" to the States, unless preempted by a federal law that "specifically relates to the business of insurance." See generally, Barnett Bank of Marion Cnty. v. Nelson, 517 U.S. 25 (1996) (finding federal law permitting certain banks to act as insurance agents and sell and solicit insurance products "specifically related to the business of insurance").